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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,366	12/12/2006	Alfred Schuetz	037051.57538US	2129
23911 7590 06/18/2009 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300				
EXAMINER				
NELSON, MATTHEW M				
ART UNIT		PAPER NUMBER		
3732				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/573,366

**Applicant(s)**

SCHUETZ, ALFRED

**Examiner**

Matthew M. Nelson

**Art Unit**

3732

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20,23-25,27-31 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20,23-25,27-31 and 33-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/888)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

1. Amendment filed on 3/30/2009 is acknowledged. Claims 21-22, 26, and 32 have been cancelled, while claims 20, 23-25, 27-31, 33-40 remain pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 20, 24, 27, are rejected under 35 U.S.C. 102(b) as being anticipated by Moore (US 1,861,932).

4. Moore shows an oral douche comprising a main conduit (tube 11, duct 20, tube 23) leading from a water container (water faucets B and C) to a spray nozzle (col. 123-128) and a mixing reservoir (cup 18) for supply of a treating agent (col. 2, lines 40-44) to the spray nozzle; wherein the mixing reservoir is formed by a mixing chamber (cup 18) and is located between the water container and the spray nozzle (Fig. 1), the water flowing to the spray nozzle being guided through the mixing chamber and wherein a substrate made of a substance soluble by water flowing past is positioned in the mixing chamber (col. 2, lines 45-62); wherein the mixing chamber is connected to the main conduit through a branch conduit (quill 27) comprising a central tubular body (quill 27) with a bore (at 27 in Fig. 2) arranged inside the mixing chamber (Fig. 2). With respect to claim 24, a parallel conduit (port 29) to the branch conduit so that the mixing reservoir

is located in a branch stream relative to the main conduit (Fig. 2). With respect to claim 27, the mixing reservoir is an annular chamber (cup 18) and includes a turbulence body (cup 18) through which the water is swirled around the substrate before it is guided to the spray nozzle (col. 2, lines 45-62).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 20, 23-25, 28-31, 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vlock (US 4,961,698) in view of Moore.

7. Vlock shows a device for spraying water in an oral cavity including a main conduit (30, Fig. 1), water container (26), spray nozzle (28), wherein the mixing reservoir is formed by a mixing chamber (100) and is located between the water container and the spray nozzle, the water flowing to the spray nozzle being guided through the mixing chamber and wherein a substrate (tablet 56) made of a substance soluble by water flowing past is positioned in the mixing chamber (Fig. 2). Vlock is directed to an ultrasonic tool, however, the water flow inherently functions as an oral douche. Regarding claim 28 which is rejected similarly to the above, Vlock further discloses a handpiece 10 comprising a grip body (the body of the device) which includes a tube connector (20; see column 3, lines 1 - 23) that is provided laterally (as

required by claim 38, discussed below), a spray nozzle (28), a longitudinal channel forming a main conduit (30) between the two, and a chamber capable of being a mixing chamber (100) that forms a reservoir and is located in the grip body. As to claims 30 and 31, Vlock further discloses a removable cap 88 wherein webs are formed (the threads of cap 88) which extend radially and in an arc on an underside of the cap to cover what is capable of being a turbulence body (the reservoir 100, as above).

Regarding claims 23 and 34, Vlock shows a restriction 128 used to restrict diameter (the same purpose as required by claim 27) and teaches that it can extend fully (to serve the purpose of the blockage of claim 34). Regarding claim 40 which is rejected similarly to the above, Vlock discloses a method for providing a treatment agent to a flow of water, with the steps of supplying a flow of water to a spray nozzle attached to a front end of a hand piece by a water supply tube connected to a rear end of the hand piece and providing a treatment agent to the flow of water by a mixing reservoir (inherent from figure 1).

8. However, Vlock fails to show wherein the mixing chamber is connected to the main conduit through a branch conduit comprising a central tubular body with a bore arranged inside the mixing chamber, a parallel conduit to the branch conduit so that the mixing reservoir is located in a branch stream relative to the main conduit. In addition, Vlock does not teach a mixing reservoir in the main part of a conduit (as required by claim 25), a longitudinal channel that extends under a floor of the mixing chamber (as required by claim 29), a mixing chamber and tube connector on the rear end of a grip body (as required by claims 35 and 36), and use of a separate endpiece that is pushed

onto the central tubular portion and contains the mixing chamber and tube connector (required by claim 36). Finally, since Vlock does not teach the separate endpiece of claim 36, he further does not disclose the main conduit (30) to be insertable into said endpiece.

9. Moore teaches a douche apparatus comprising a mixing chamber (cup 18) connected to the main conduit (duct 20) through a branch conduit (quill 27) comprising a central tubular body (quill 27) with a bore (at 27 in Fig. 2) arranged inside the mixing chamber (Fig. 2), a parallel conduit (port 29) to the branch conduit so that the mixing reservoir is located in a branch stream relative to the main conduit (Fig. 2). The central tubular body of Moore is capable of receiving an annular tablet. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Vlock's mixing reservoir by having the interface to the main conduit of Moore in order to avoid violent agitation, yet provide a sufficient jet to thoroughly admix the influent water and a tablet.

10. With respect to the channel under a floor of a mixing chamber, a mixing reservoir in the main part of a conduit, and a mixing chamber and connector on the rear end of a grip body, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to modify Vlock/Moore's handpiece by changing the locations of the chamber and conduit, as it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

11. Regarding the separate end piece of claims 36 - 37, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make a

separate endpiece for the reservoir and tube connector, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

12. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vlock in view of Moore as applied to claim 20 above, and further in view of Chernack (US 4,979,503).

13. Vlock discloses the device as previously described above, but fails to show a turbulence body through which the water is swirled around the substrate.

14. Chernack teaches a turbulence body (turbine 44 in housing 42). Therefore, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to modify Vlock/Moore's handpiece by incorporating the turbulence body of Chernack in order to better dissolve the medicating tablet.

### ***Response to Arguments***

15. Applicant's arguments with respect to claims 20, 23-25, 27-31, 33-40 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew M. Nelson whose telephone number is (571) 270-5898. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MMN/

/Cris L. Rodriguez/  
Supervisory Patent Examiner, Art Unit 3732